

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10418-MEL

STEPHEN SCANLON,
Plaintiff,

v.

ANDREA J. CABRAL, individually and in
her capacity as Sheriff of Suffolk
County, SUFFOLK COUNTY, and the CITY
COUNCIL OF THE CITY OF BOSTON,
Defendants.

DEFENDANTS SUFFOLK COUNTY'S AND CITY COUNCIL OF THE CITY OF
BOSTON'S MOTION TO DISMISS.

NOW COME Suffolk County and the City Council of the City of Boston, Defendants in the above-entitled action, and hereby move pursuant to Fed. R. Civ. P. 12(b) (6) that this Honorable Court dismiss all Counts of the Plaintiff's Complaint directed against them.

As grounds therefore, the Defendants, Suffolk County and City Council of the City of Boston, state that:

1. St. 1991, ch. 138, §§362 and 363 transferred supervision and control of all Suffolk County penal employees from the mayor and city council of the City of Boston (i.e., the vestigial remnants of "Suffolk County") to the Sheriff, including all authority regarding appointments, transfers, terminations and promotions;

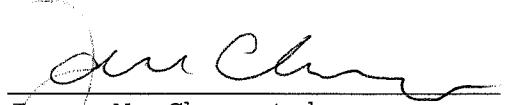
2. St. 1991, ch. 138, §363(c) specifically exempted the Sheriff's Department from the provisions of G.L. c. 35, which had formerly provided that the City Council serve as a county personnel board; and,
3. The Suffolk County Sheriff's Department is a legal entity amenable to suit which has previously litigated and settled claims both on its own behalf, and on behalf of "Suffolk County" when the litigation related to jail functions or Sheriff's Department employment matters, and the Sheriff's Department is already a defendant in this case because the Sheriff is named as a defendant in her official capacity.

In support of their Motion, the Defendants, Suffolk County and City Council of the City of Boston, submit the attached Memorandum of Law.

Respectfully submitted,
DEFENDANTS, SUFFOLK COUNTY and CITY COUNCIL OF THE CITY OF BOSTON,

Merita A. Hopkins
Corporation Counsel

By their attorney:



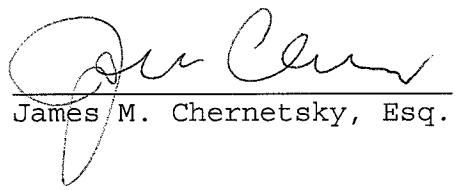
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(617) 635-4048
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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

I hereby certify that undersigned counsel for the Defendants, Suffolk County and City Council of the City of Boston, informed Plaintiff's counsel of record via facsimile to (617) 367-4820 on April 1, 2004, of the bases for this motion, and that counsel were unable to narrow the issues presented herein prior to filing of the motion.

4-2-04

Date



James M. Chernetsky, Esq.